IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3092 OF 1986

Rajendra Jagjivandas Shah,)
carrying on business in the trade name)
and style of M/s.R.J.Corporation as its)
sole proprietor, having its office at)
D-54, Sarvodaya Nagar, Fifth Floor,)
1st Panjarpole Lane, Bombay 400 004.)...Plaintiff

Versus

Shree Ganesh Filaments & Fabrics)
Manufacturing (India) Pvt Ltd.,)
a company registered under the Companies)
Act, having their registered office at)
Sagar Sadan, Shahi Baug,)
Ahmedabad 380 004.)...Defendants

Shri J.S.Shah for the Plaintiff.

CORAM : ABHAY S.OKA, J.
DATED : SEPTEMBER 05, 2007.

ORAL JUDGMENT:

1. The Plaintiff has filed this suit for recovery of a sum of Rs.62,270/- together with interest at the rate of 18% per annum from the date of filing of the suit on the principal amount of Rs.43,729.12/-.

2. According to the case of the Plaintiff, he is carrying on business in the name and style of M/s.R.J.Corporation as its sole proprietor. According to the Plaintiff, his business is of cloth merchant and commission agent. As per the instructions of the Defendants, the Plaintiff in the trade name of

M/s.R.J.Corporation sold and delivered to the Defendants grey shirting as per invoice dated 26th March, 1984 in the sum of Rs.22,018,40/- and invoice dated 27th March, 1984 for the sum of Rs.22,105.94/-. According to the case of the Plaintiff grey shirting of total cost of Rs.44,124.34/- was sold by him to the Defendants.

3. After receiving material under invoice dated 26th March, 1984 the Defendants forwarded their report dated 29th March, 1984 intimating that there was shortage of 13.75 meters. After receiving the material covered by invoice dated 27th March, 1984 the Defendants forwarded a report dated 31st March, 1984 showing that there was a shortage of 14.50 meters and material having length of 9 meters was returned. According to the case of the Plaintiffs the cost of shortage shown by the Defendants in their report dated 29th March, 1984 was Rs.145.89/- as the invoice was prepared at the rate of Rs.10.61/- per sq meter. As per the report dated 31st March, 1984 there was shortage of 14.50 meters and material admeasuring 9 meters was returned. He stated that as per the rate mentioned in invoice dated 27th March, 1984 cost of the aforesaid material comes to Rs.249.33/-. According to the case of the Plaintiff after deducting the aforesaid amounts of Rs.145.89/- and Rs.249.33/- the balance amount payable by the Defendants

is Rs.43.729.12/-.

4. By Advocate's letter dated 19th June, 1984 the Plaintiff called upon the Defendants to pay the amount due at the rate of 18% per annum. The Defendants by their reply dated 19th July, 1984 disputed the claim of the Plaintiffs. Thereafter there was a further exchange of correspondence between the parties. Ultimately by communication dated 01st October, 1984 the Advocate for the Plaintiff finally called upon the Defendants to pay the outstanding amount together with interest at the rate of 18% per annum.

5. The Defendants filed written statement. The first contention raised in the written statement is that the Plaintiff has obtained a leave under clause 12 of the Letters Patent by suppressing the material facts from this Court and therefore, the leave is liable to be revoked and consequently the suit will have to be dismissed. According to the case of the Defendants they used to purchase grey goods from one Babubhai who used to supply the said goods in the name of M/s.Harshad B. Shah, M/s.R.J.Corporation and M/s.M.B. Textiles. It is alleged that in March 1984 the said Babubhai on the behalf of the said three firms had contracted to supply to the Defendants fifteen thousand meters of grey cloth.

However, the said Babubhai supplied only four thousand meters of the grey cloth and refused to supply the balance quantity. It is stated that the Defendants were forced to purchase the balance quantity from open market at the cost which is higher than the price agreed by the said Babubhai. According to the case of the Defendant they submitted a debit note dated 18th April, 1984 in that behalf.

6. It is contended that due to defects in the weaving of the fabric supply by the Plaintiff, defects were found in the finished fabrics. It is stated that the Plaintiff took delivery of the said finished goods and agreed to give credit note to the Defendants at the rate of Rs.18/- per sq meter. The Defendants denied that any amount is payable by them.

7. Following issues were framed on 05th December, 2003:

"1) Whether this Court has jurisdiction to entertain and try this suit?

2) Whether leave under Clause 12 of Letters Patent granted by this Court is liable to be revoked?

3) Whether the Plaintiffs agreed to supply to the Defendant 15000 mtrs of grey clothes?

4) Whether the Defendants have committed breach of the contract by not supplying the entire quantity of the contractor goods?

5) Whether the Defendants have suffered losses on account of the said breach committed by the Defendants?

6) Whether there were weaving defects in many of the lots supplied by the Plaintiffs?

7) Whether the Defendants have suffered losses on account of the said defects?

8) Whether the Defendants are entitled to claim the amount of the said losses from the Plaintiffs?

9) Whether the Plaintiffs are entitled to recover from the Defendants the amount as claimed?

10) What relief?

8. The Plaintiff examined himself by filing his affidavit in lieu of examination-in-chief. The examination-in-chief of the Plaintiff was recorded in Court on 24th August, 2007. However, none appeared for the Defendants and hence cross-examination of the Plaintiff by the Defendants was treated as closed. The suit was kept for further hearing on 31st August, 2007. On that day none appeared for the Defendants. Therefore, the evidence of the Defendants was ordered to be closed and today the arguments were heard.

9. The Plaintiff has produced office copies of invoices dated 26th March, 1984 and 27th March, 1984. In view of what is stated in paragraph No.3 of the affidavit in lieu of examination in chief, the said two documents have been duly proved by the Plaintiff. The Plaintiff has also produced check reports dated 29th March, 1984 and 31st March, 1984 forwarded by the Defendants. The said two check reports have been duly proved by the Plaintiff. Office copies of the communications dated 19th June, 1984, 01st October, 1984, 23rd August, 1986 as well as 06th September, 1986 made by the Advocate for the Plaintiff to the Defendants have been also produced and proved by the affidavit in lieu of evidence of the Plaintiff. Copies of the reply

dated 19th July, 1984, 09th November, 1984, 30th August, 1986 and 11th September, 1986 are placed on record.

10. Invoice dated 26th March, 1984 is in the sum of Rs.22.018.40/- in respect of quantity of 2075.25 at the rate of Rs.10.61/-. The invoice dated 27th March, 1984 is inrespect of quantity of 2083.50 at the rate of Rs.10.61/-. The total amount payable under the said invoices is Rs.44,125.34/-. The check report dated 29th March, 1984 shows that in the goods mentioned in invoice dated 26th March, 1984 there was a shortage of 13.75 meters. The report dated 31st March, 1984 shows that in the goods supplied under the invoice dated 27th March, 1984 there was shortage of 14.50 meters and length of 9 meters was returned.

11. The rate at which the goods were sold is mentioned in the invoices and exact figures of the shortage and/or goods returned are also mentioned in the check reports. Thus, the fact that goods were supplied and delivered by the Plaintiff to the Defendants has been established and even the shortage has been established. The quantity of shortfall is clearly mentioned in reports dated 29th March, 1984 and 31st March, 1984. By calculating the cost of the material which is short at the agreed rate of Rs.10.61, the

Plaintiff has given credit in the amount of Rs.145.89/- and Rs.249.33/-. The claim of the Plaintiff is restricted to Rs.43.729.12/- together with interest.

12. The burden to prove issue No.2 was on the Defendants and they have not discharged the said burden. Therefore, as the order granting leave under clause XII is not revoked, the 1st issue of jurisdiction will have to be answered in favour of the plaintiff. The issue No.3 will have to be answered in the affirmative in view of the earlier discussion. In so far as the issue Nos.4 to 8 are concerned, the burden to prove the said issues was entirely on the Defendants. As the Defendants have not cross-examined the Plaintiff and have not led any evidence, the issue Nos.4 to 8 will have to be answered against the Defendants. The affidavit in lieu of examination-in-chief of the Plaintiff has gone unchallenged as the Plaintiff has not been cross-examined. Thus, the Plaintiff has established that the Defendant is liable to pay a sum of Rs.43.729.12/-. In the two invoices it is stated that interest at the rate of 18% per annum will be charged from the date of the bill. The Plaintiff has calculated interest on the principal amount covered by both the invoices at the rate of 18% per annum till the date of institution of the suit. The total amount payable i.e

the principal and interest from the date of filing of suit comes to Rs.62,217/-. To that extent the claim of Plaintiff must succeed.

13. So far as further interest is concerned, it is always at the discretion of the Court. The suit is filed in the year 1985. It is true that the suit arises out of a business transaction. Considering the nature of the transaction as well as the status of the parties, further interest is fixed at the rate of 9% per annum.

14. Hence, I pass the following order:

(i) The suit is decreed as prayed with a modification that interest payable on sum of Rs.43.759.12/- at the rate of 9% per annum from date of filing of the suit till payment or realisation.

(ii) The Defendants will pay costs of the suit to the Plaintiff and bear their own costs.

(iii) Certified copy is expedited.

JUDGE